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09/703,549	05/01/2000	Joseph Giovannoli		6863

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EXAMINER

KYLE, CHARLES R

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 11/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/703,549

Applicant(s)

GIOVANNOLI, JOSEPH

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Reissue Applications***

The Examiner notes that Applicant has surrendered his Patent, U S number 5,842,178 and that the original patent document is now part of the file of this reissue application.

The Examiner notes that Applicant may have his originally issued Patent, U S number 5,842,178 returned if this application is abandoned and a request for return is received by Technology Center 3600. See MPEP Section 1416.

Applicant's request for transfer of drawings of Figs. 1-8 (9 sheets) from prior Patent, U S number 5,842,178 is acknowledged.

Applicant is reminded of the proper format for amendments to the specification of a reissue application. See 37 CFR 1.173.

Applicant is reminded of the proper treatment of amendments in a reply to an office action. Specifically, applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cite or the objections made. See 37 CFR 1.111.

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The Examiner notes that all references cited in the prosecution of parent applications are again cited on the enclosed Form PTO-892.

This Application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01. If Applicant owns the entire interest because it has not been assigned, Applicant is specifically required to make such a statement. Note that the applicant himself or herself must make the statement or provide a statement authorizing a representative to make such a statement.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

For the purpose of this action the assumption is made that the interest has been assigned. The Examiner awaits the verification that the Applicant owns the entire interest in the subject application referred to at page 2 of the August 29, 2002 amendment.

Objection to the Specification previously set forth is withdrawn.

**Claims 1-44** are rejected as being based upon a defective Declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above in the discussion regarding assignment of the entire interest.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

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"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

The Examiner awaits a supplemental declaration referred to at page 2 of the August 29, 2002 amendment.

**Claims 3-44** are rejected as being based upon a defective Declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth below in the discussion regarding the objection to the Specification.

#### ***Specification***

The objection to the specification under the first paragraph of 35 U.S.C. 112 is withdrawn.

#### ***Claim Rejections - 35 USC § 112***

The rejections of Claims 3-44 are rejected under 35 U.S.C. 112, first paragraph are withdrawn.

#### ***Examiner's Note***

The withdrawal of objections and rejections set forth above is due to Applicant's admissions that the use of hypertext link technology was well known at least at page 5, first

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paragraph and page 6, first full paragraph and submission of two documents with the amendment. The Examiner submits that this merely corroborates the observations below regarding the use of hypertext links as being obvious.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

**Concerning Claim 2**, Cameron et al disclose the invention as claimed including in a method of utilizing a data network (Col. 4, line 54 to Col. 5, line 12) for advertising and selling items for sale by a seller (Abstract) including the steps of:

communicating, to centralized filter means (Abstract, Summary of the Invention), from a plurality of sellers (Background of the Invention; Col. 17, lines 4-58) sale information indicating items offered for sale (Coll. 1, line 5 to Col. 3, line 27) to at least one class of buyers (Col. 9, line 51 to Col. 10, line 43) to receive sale information;

communicating, to the centralized filter means, from a potential buyer, a category of item in which said buyer is interested (Col. 15, line 66 to Col. 16, line 48);

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using said centralized filter means to match buyer and seller supplied information  
(Summary of the Invention);

communicating an offer for sale from said seller for at least one item in said  
category of items indicated, to a buyer if said buyer is within said class and said items are  
within said category (Col. 13, line 28 to Col. 17, line 58) .

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or  
described as set forth in section 102 of this title, if the differences between the subject  
matter sought to be patented and the prior art are such that the subject matter as a whole  
would have been obvious at the time the invention was made to a person having ordinary  
skill in the art to which said subject matter pertains. Patentability shall not be negated  
by the manner in which the invention was made.

**Claim 1** is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al in  
view of Shoquist et al.

**Regarding Claim 1**, Cameron et al disclose the invention substantially as claimed  
including in a system for engaging in commercial transactions (Abstract);

filter means for accepting filter conditions from buyers and sellers (Abstract,  
Summary of the Invention);

a plurality of buyers (Col. 9, line 49 to Col. 10, line 44) for communicating RFQs (Col.  
14, lines 51-61) to said filter means;

a plurality of sellers (Col. 13, line 40 to Col. 14, line 61) for communicating quotes (Col. 1, line 5 to Col. 3, line 27) to said filter means in response to said RFQs, and which quotes should be received by the buyer (Summary of the Invention).

Cameron et al do not specifically disclose that the filter means includes means for determining which sellers should receive RFQs from a buyer. Shoquist et al disclose this feature at Col. 6, lines 50-59 and Fig. 10. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the seller filtering feature disclose by Shoquist et al in the commercial system of Cameron et al because this would have allowed buyers to view quotations from only those suppliers with whom they would most successfully and profitably deal. For example, a zip code filter element for screening suppliers would have allowed a buyer to send RFQs only to those nearby suppliers who could likely submit a competitive quote. A buyer of a heavy auto batteries would not have wanted to submit RFQs to a battery supplier located across the country because such a supplier would have been non-competitive due to excessively high shipping costs. The buyer would only have wished to send RFQs to those sellers who might most cheaply deliver batteries.

**Claims 3-6, 8-13, 15, and 18-44** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al in view of Taylor.

**With respect to Claim 3**, see the discussion of Claim 20 below, a more comprehensive claim.



**Concerning Claim 4**, Cameron et al discloses completing a purchase request by clicking without further input at Col. 16, lines 49-62. Further see Taylor at pages 244 and 214 for the use of links in purchasing and a link definition.

**As to Claim 5**, Cameron et al discloses authorization for the use of credit information at Col. 11, line 50 to Col. 12, line 54.

**Regarding Claim 6**, see the discussion of Claim 4 above.

**Concerning Claim 8**, Cameron et al disclose credit information including billing and shipping information at Col. 10, line 54 to Col. 11, line 22 and Col. 17, line 60 to Col. 18, line 35 respectively.

**As to Claim 9**, Cameron et al disclose that buyer's credit information is prestored in a server at Col. 4, line 54 to Col. 5, line 64 and Col. 10, line 46 to Col. 12, line 60.

**With respect to Claim 10**, Cameron et al disclose a server that is remotely accessible by a seller through a network at Fig. 1, element 6 and Col. 4, line 54 to Col. 5, line 12.

**Concerning Claim 11**, Taylor discloses a link in an email message at page 33, "electronic mail URL". It would have been obvious to have provided a link in this form because this would have allowed a buyer to have reply with a purchase request using a familiar and convenient network communication tool.

**Concerning Claim 12**, Taylor discloses hypertext link containing webpage at page 213 and page 214, Fig. 12-12. It would have been obvious to have provided a link in this form because this would have allowed a buyer to have navigated to a suitable webpage to complete a purchase request using a familiar and convenient network communication tool.

**As to Claim 13**, see the discussion of Claims 11 and 4.

**With respect to Claim 15**, Cameron et al disclose a page containing a link to further product information at Fig. 22 and Col. 15, lines 21-27.

**Regarding Claim 18**, see the discussion of Claim 17 above and it would further have been obvious to have sent a purchase request to the CPU as this was where the purchase processing was done.

**With respect to Claim 19**, the use of a browser for purchasing is disclosed by Taylor at pages 40-41 and page 214. See the Internet Explorer © symbol at the upper left hand corner of the webpage illustration of page 214.

**Concerning Claim 20**, Cameron et al disclose the invention substantially as claimed including in a method of effectuating a purchase between a buyer and a seller over a computer communications network (Abstract; Col. 5, lines 11-12; Fig 1; Col. 4, line 66 to Col. Col. 5, line 64), the steps of:

- a. providing credit information of said buyer to a seller (Col. 12, line 61 to Col. 13, line 3):
- b. providing over said computer communications network, from a plurality of sellers (Background of the Invention; Col. 17, lines 4-58), a page including information of a seller's offer (Fig. 20 and 22-26; Col. 13, line 25 to Col. 17, line 57) and a link for said buyer to make a response (Col. 16, lines 49-62);
- c. displaying said link containing page to said buyer (Col. 3, lines 3-20);
- d. sending a purchase request by said buyer to selected seller by clicking on a link (Col. 16, lines 49-62)
- e. fulfilling said purchase upon receipt of said purchase request from said

buyer (Col. 17, line 60 to Col. 18, line 62).

Cameron et al do not specifically disclose that the link is a hypertext link. Taylor, however, discloses the use of hypertext links (buttons) in effectuating a purchase between a buyer and a seller at pages 213-217, particularly page 214. See also Taylor, pages 96-110 for a specific disclosure of the use of hypertext links in a "Virtual Deli" business. It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the hypertext links disclosed by Taylor in the method of Cameron et al because this would have provided a quick and easy way for buyers to perform the purchase functions disclosed by Cameron et al on the Internet, a computer communications network.

It would further have been obvious to have selected a seller from a plurality of sellers because this would have allowed a buyer to choose from a broader range of sellers than just one, thus increasing competition and benefiting the buyer. This choice is suggested by Fig. 18 which shows four separate catalogs from which a buyer may select.

**Concerning Claim 21**, Cameron et al further discloses remote accessibility to a CPU by a buyer and seller at Fig. 1 and Col. 5, lines 6-12.

**As to Claim 22**, see the discussion of Claim 21 and Cameron et al further disclose displaying a page to a buyer at Col. 3, lines 3-19.

**Regarding Claim 23**, see the discussion of Claim 22 and it would further have been obvious to have had the seller display the page because the seller would have been the party with the most readily available and up-to-date information to be displayed.

**With respect to Claim 24-26**, see the discussions of Claims 11, 12 and 14 above.

**As to Claim 27**, see the discussion of Claim 18 above. See also Fig. 6, elements 34 and 10.

**Regarding Claim 28**, Cameron et al disclose retrieval of buyer's credit information to fulfill a purchase at Col. 10, line 54 to Col. 11, line 36.

**As to Claim 29 and 30**, Cameron et al disclose the clearing of credit at Col. 11, lines 50-60. Further it would have been obvious to have performed such clearing at the CPU because this was the location for the purchase processing disclosed by Cameron et al.

**With respect to Claim 31**, it is the system form of Claim 3 and is rejected in a like manner. See also the system disclosed by Cameron et al at Figs. 1 and 2 and related text for specific disclosure of a system to perform the method of Claim 3.

**Regarding Claim 32**, see the discussion of Claims 9 and 10 above.

**Regarding Claim 33**, it would have been obvious to have provided access to buyer's credit to seller only upon receipt of a purchase request because this would have been one of only a few instances when it was needed by the seller. Such limited access would have reduced the likelihood that an unscrupulous employee would have misused buyer's credit information. Such information should have been provided only on a need-to-know basis.

**Concerning Claim 34**, Cameron et al disclose a buyer identifier to access credit information at Col. 9, line 49 to Col. 10, line 43 and Col. 11, lines 1-60.

**Regarding Claims 35 and 36**, see the discussion of Claims 9 and 10 above.

**As to Claim 37**, see the discussion of Claim 11 above.

**Concerning Claim 38**, Taylor discloses a hypertext link to show further information on an offer at page 214, Fig. 12-12, e.g. "Food and Beverages" item.

**As to Claim 39**, Cameron et al disclose a means for inputting buyer's credit information at Col. 11, lines 11-49 and Fig. 1, ele. 7.

**Regarding Claim 40**, Taylor disclose a seller's website accessible through the network for providing a link containing page to a buyer at Page 214, Fig. 12-12.

**With respect to Claim 41**, Cameron et al disclose the network as the Internet, which uses TCP/IP (Transmission Control Protocol/Internet Protocol) at Col. 5, lines 11-12.

**Regarding Claim 42**, see the Abstract of Cameron et al and the discussions of Claims 20, 21 and 27 above.

**With respect to Claim 43**, see the discussion of Claim 42 above and Cameron et al further disclose credit verification at Col. 11, lines 50-60.

**As to Claim 44**, see the discussion of Claims 3,5,8 and 9 above

**Claims 7, 14 and 16-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al and Taylor in view of Ginsburg.

**With respect to Claim 7**, see the discussion of Claims 3, 5 and 6 above. The Cameron et al and Taylor references do not specifically teach the use of a single click to complete a purchase request, although this would have been obvious due to the simplicity and speed of such an operation. Ginsburg specifically discloses this feature at page 3, bracketed text. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the single click purchase completion disclosed by Ginsburg in the combination of Cameron et al and Taylor because of the convenience cited by Ginsburg at item 1, bracketed text. Ginsburg also provides clear motivation for the combination of the detailed elements of Cameron et al and

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Taylor because of his concise disclosure of click, and specifically single click methods in an Internet based purchasing system.

**Regarding Claim 14**, see the discussion of Claims 4, 6 and 7 above. Further, Ginsburg discloses clicking on a hypertext link to send a purchase request to the seller at page 3, second paragraph, the discussion of buying squid at Al's Bait Shop. Further, it would have been obvious to have directly sent such a purchase request to the seller because this would have aided quickest delivery of purchased items.

**Regarding Claim 16**, see the discussion of Claim 14 above and it would further have been obvious to modify Cameron et al and Taylor by having the seller provide the page to the buyer directly because this would have provided the most up-to-date information and pricing available to the potential buyer. Note that Ginsburg specifically discloses that "Al's Bait Shop catalog" is presented in connection with the "Buy Squid" link to purchase.

**With respect to Claim 17**, Cameron et al discloses that the page is provided by a CPU remotely accessible to buyer and seller on a communications network at Fig. 1, ele. 6 and Col. 4, lines 54 to Col. 5, line 64.

### ***Response to Arguments***

Applicant's arguments filed August 29, 2002 have been fully considered but they are not persuasive.

Applicant's arguments discuss the prior art at length; his substantive arguments are condensed and specifically responded to below.

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Applicant's substantive argument begins at page 9 of the amendment concerning the rejection of Claim 2. Applicant goes to great length to describe the *Cameron* reference but does not describe how the claimed invention distinguishes. At the first paragraph of page 9, Applicant asserts that the reference fails to teach communication to a centralized filter means from a plurality of sellers sales information indicating items for sale. Applicant fails to specifically address how the Examiner's citation of paragraph in the rejection is deficient.

At the second paragraph of page 9, Applicant states that *Cameron* discloses no "offer" means, and then admits that the reference discloses "offers". The Examiner notes that offers are disclosed at least at Figure 20 which shows in element 211 the heading "Offer Price". These offers from sellers such as LandsEnd in Figure 19. The offers are communicated to a centralized filter means, the search means, so that suitable offers can be identified by buyers through searching (filtering). At the last paragraph of page 9, Applicant argues that *Cameron* fails to disclose a **centralized** filter means, but only argues non-claimed elements from the specification.

At pages 10-12, Applicant argues the essentially the same point addressed above with respect to Claim 1. The argument is similarly unpersuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner has

provided a motivation to combine the references in the rejection of Claim 1 which has not been substantively addressed by Applicant and is therefore not refuted.

At page 12, second full paragraph, Applicant argues the same point addressed above with respect to Claim 2, with respect to communication of offers to a centralized filter means.

At page 13, first paragraph, Applicant again argues that the prior art does not contain a motivation to combine the references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine references specifically set forth above regarding Claims 20 and 3 is not refuted by Applicant.

At page 13, second paragraph to page 14, Applicant simply restates claim limitations and only at page 14 does he argue unclaimed elements of business-to-business transactions and “genuine” offers which are not made distinct from the offers of *Cameron*. The Examiner notes that the listing of items in *Cameron* constitutes an offer; Figures 18-20 clearly constitute an offer by the LandsEnd Company to sell items such as shirts at published prices. How Applicant's offers might differ from these offers is unexplained.

At the bottom of page 14 onto page 15, Applicant asserts that the prior art fails to teach features of providing and selecting. The rejection sets forth above includes an unrefuted obviousness statement regarding these features.



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Arguments at pages 15, first full paragraph to page 16 consist of recitations of claim language and assertions that the combination of references do not teach the claimed invention. Applicant fails to specifically explain why the rejections set forth above are deficient; no reasons are given.

The rejections are maintained.

### ***Conclusion***

This is a RCE of applicant's earlier Application No. 09/703,549. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on Monday - Friday, 8:30 - 5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

crk

crk

November 15, 2002



**HANI M. KAZIMI**  
**PRIMARY EXAMINER**